

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ZION T. GRAE-EL, et al.,

CASE NO. C21-1678JLR

Plaintiffs,

## ORDER ON MOTION FOR RECONSIDERATION

CITY OF SEATTLE, et al.,

## Defendants.

## I. INTRODUCTION

Before the court is Defendant Seattle Children’s Hospital’s (“Children’s”) motion for reconsideration of one aspect of the court’s March 1, 2022 order on Children’s motion to dismiss. (Mot. (Dkt. # 65); Reply (Dkt. # 70); *see also* 3/1/22 Order (Dkt. # 57).) Plaintiffs Zion T. Grae-El and Caprice Strange (collectively, “Plaintiffs”) oppose the motion. (Resp. (Dkt. # 69).) The court has considered the parties’ submissions, the

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1 relevant portions of the record, and the applicable law. Being fully advised,<sup>1</sup> the court  
 2 GRANTS Children's motion for reconsideration.

## 3 II. ANALYSIS

4 In its March 1, 2022 order, the court granted in part and denied in part a motion to  
 5 dismiss Plaintiffs' claims filed by Children's, Brendan Aguilar, Dr. Hannah Deming, and  
 6 Dr. Stanford Ackley. (See 3/1/22 Order at 20.) The court denied the motion as to  
 7 Plaintiffs' *respondeat superior* claim against Children's because the court concluded that  
 8 RCW 26.44.060—the immunity statute on which Ms. Aguilar, Dr. Deming, and Dr.  
 9 Ackley's dismissal was based—provides immunity that is personal and, thus, did not  
 10 apply to Children's as their employer. (See *id.* at 17-18; *see also* Compl. (Dkt. # 1-1) at  
 11 45-46 (alleging that Children's is liable based on the substandard care provided by its  
 12 employees).) Children's now seeks reconsideration of that ruling. (See *generally* Mot.)

13 In this district, “[m]otions for reconsideration are disfavored” and courts “will  
 14 ordinarily deny such motions in the absence of a showing of manifest error in the prior  
 15 ruling or a showing of new facts or legal authority which could not have been brought to  
 16 its attention earlier with reasonable diligence.” Local Rules W.D. Wash. LCR 7(h).  
 17 Children's does not raise “new facts or legal authority which could not have been brought  
 18 to [the court's] attention earlier with reasonable diligence,” but rather seeks  
 19 reconsideration to remedy “manifest error.” *See* Local Rules W.D. Wash. LCR 7(h)(1);  
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21 <sup>1</sup> Plaintiffs have requested oral argument (Resp. at 1), but the court concludes that oral  
 22 argument would not be helpful to its disposition of the motion. *See* Local Rules W.D. Wash.  
 LCR 7(b)(4).

1 (see also Mot. at 3-4). Specifically, Children's argues that the court's decision to not  
 2 dismiss Plaintiffs' *respondeat superior* claim constituted "clear error" in light of  
 3 Washington Court of Appeals cases "extended[ing] RCW 26.44.060's specific statutory  
 4 immunity to [Children's]." (See *id.* at 3-4 (first citing *Miles v. State, Child Protective  
 5 Servs. Dep't*, 6 P.3d 112 (Wash. Ct. App. 2000); then citing *Grennan v. Children's  
 6 Hosp.*, \_\_\_ P.3d \_\_\_, 2001 WL 76959 (Wash. Ct. App. 2001); and then citing *Yuille v.  
 7 State Dep't of Soc. & Health Servs.*, 45 P.3d 1107 (Wash. Ct. App. 2002).)

8       RCW 26.44.060 provides immunity from civil liability for "any person  
 9 participating in good faith in the making of a report . . . , or otherwise providing  
 10 information or assistance, including medical evaluations or consultations, in connection  
 11 with a report, investigation, or legal intervention pursuant to a good faith report of child  
 12 abuse or neglect." RCW 26.44.060. The court previously concluded that this statutory  
 13 provision did not protect Children's from *respondeat superior* liability in light of  
 14 Washington Supreme Court case law "holding that '[p]ersonal immunities granted  
 15 employees cannot reach the separate actions of their employer,' and so '[a]n agent's  
 16 immunity from civil liability generally does not establish a defense for the principal.'"

17 (3/1/22 Order at 18 (quoting *Babcock v. State*, 809 P.2d 143, 156 (Wash. 1991)  
 18 ("*Babcock II*") (citing Restatement (Second) of Agency § 217 (1958))).)

19       Children's now argues that the *Babcock II* holding is properly cabined to cases  
 20 applying common-law immunities to governmental employers. (See Mot. at 3 (citing  
 21 *Babcock II*, 809 P.2d at 156).) Children's motion to dismiss did not challenge whether it  
 22 was operating under color of law for purposes of Plaintiffs' 42 U.S.C. § 1983 claims,

1 thus, even if *Babcock II*'s holding is limited to immunity for governmental employers,  
2 that does not necessarily foreclose its application to Children's given the allegations and  
3 posture of the case. (See 3/1/22 at 6 n.6.) More persuasive is Children's argument that  
4 *Babcock II*'s limitation on immunity for *respondeat superior* liability was based on its  
5 balancing of controlling "policy considerations," *Babcock II*, 809 P.2d at 156. (See Mot.  
6 at 3.)

7 Children's now cites several Washington Court of Appeals cases that strike that  
8 balance in favor of immunity from *respondeat superior* liability for employers, like  
9 Children's, in the specific context of RCW 26.44.060's statutory grant of immunity. (See  
10 *id.* at 3-4 (first citing *Miles*, 6 P.3d 112; then citing *Grennan*, 2001 WL 76959; and then  
11 citing *Yuille*, 45 P.3d 1107).) The facts of *Miles*, *Grennan*, and *Yuille* are very similar.  
12 In each of those cases, parents alleged that Children's and healthcare providers employed  
13 by Children's had negligently diagnosed their children with Munchausen's syndrome by  
14 proxy ("MSBP") and, on that basis, reported possible parental abuse. See *Yuille*, 45 P.3d  
15 at 1110; *Miles*, 6 P.3d at 117-18; *Grennan*, 2001 WL 76959, at \*2.

16 The courts considered "[t]he purpose behind the immunity" established by RCW  
17 26.44.060, which they found was "to encourage those in the position to suspect child  
18 abuse to report it." See, e.g., *Yuille*, 45 P.3d at 1111 (citing *Whaley v. State, Dep't of Soc.*  
19 & Health Servs., 956 P.2d 1100, 1105 (Wash. Ct. App. 1998)); *Grennan*, 2001 WL  
20 76959, at \*7 (recognizing that "the injury to parents from reporting suspected abuse that  
21 ultimately is not provided can be great, including . . . temporary loss of custody of a  
22 child" but observing that "the Legislature sought to protect the paramount interests of

1 “children” by enacting RCW 26.44.060). Although none of these cases expressly discuss  
2 *respondeat superior* liability, each found that RCW 26.44.060 provided immunity from  
3 liability to the diagnosing physician and his employer, Children’s, which was not alleged  
4 to have participated in the tortious conduct except through the acts of its employee. *See*  
5 *Yuille*, 45 P.3d at 1112; *Miles*, 6 P.3d at 121; *Grennan*, 2001 WL 76959, at \*7. Thus, the  
6 inescapable conclusion is that the *Yuille*, *Miles*, and *Grennan* courts found that immunity  
7 under RCW 26.44.060 extends to shield an employer from *respondeat superior* liability  
8 where its employee has acted in good faith. *See id.*

9 Plaintiffs’ attempt to distinguish these cases on their facts is unavailing. (*See*  
10 Resp. at 3-4 (discussing *Miles* and *Grennan*).) These cases—in which a healthcare  
11 provider employed by Children’s made an allegedly negligent diagnosis indicative of  
12 parental abuse and then reported that finding to child welfare authorities—are factually  
13 analogous to Plaintiffs’ case in all relevant respects. *See Yuille*, 45 P.3d at 1108-1110;  
14 *Miles*, 6 P.3d at 115; *Grennan*, 2001 WL 76959, at \*6. Likewise, Plaintiffs’ argument  
15 that RCW 26.44.060 should not apply to Children’s because its agents did not act in good  
16 faith is unpersuasive. (*See* Resp. at 5-7.) The court previously found that Plaintiffs failed  
17 to allege a lack of good faith because they alleged, “at most, . . . that [Ms. Aguilar, Dr.  
18 Deming, and Dr. Ackley] were negligent in conducting their examination of the  
19 children.” (*See* 3/1/22 Order at 16.) Allegations of negligence are not enough to defeat  
20 immunity under RCW 26.44.060. (*Id.* (“Even if the Children’s Defendants were  
21 negligent, however, they are still immune from liability under RCW 26.44.060.”)); *see*  
22 *also Miles*, 6 P.3d at 121 (“Assuming without holding that Dr. Feldman negligently

1 diagnosed MSBP, he and Children's are immune from liability as a matter of law.”).

2 Neither the parties nor the court has identified any Washington Supreme Court  
 3 authority directly addressing the applicability of RCW 26.44.060 to *respondeat superior*  
 4 liability claims. (See generally Mot.; Resp.; Reply.) In the absence of such controlling  
 5 guidance, “the court looks to existing state law to predict how the Washington Supreme  
 6 Court would resolve the question.” *See Lacey Marketplace Assocs. II, LLC v. United*  
 7 *Farmers of Alberta Co-op. Ltd.*, 107 F. Supp. 3d 1155, 1158 (W.D. Wash. 2015) (citing  
 8 *Ticknor v. Choice Hotels Int'l, Inc.*, 265 F.3d 931, 939 (9th Cir. 2001)). Accordingly, the  
 9 court concludes that the approach taken in *Yuille, Miles*, and *Grennan* reflects the current  
 10 state of Washington law on this matter, and thus, finds that RCW 26.44.060 applies to  
 11 shield Children's from *respondeat superior* theory liability where its employees have  
 12 participated in good faith in the reporting or investigation of suspected child abuse. *See*  
 13 *Yuille*, 45 P.3d at 1111-12.

14 Accordingly, to avoid the “manifest error” that would result if Children's is denied  
 15 the qualified immunity afforded by RCW 26.44.060 at this early juncture of the litigation,  
 16 Children's motion for reconsideration is GRANTED. *See* Local Rules W.D. Wash. LCR  
 17 7(h); *see also Anderson v. Creighton*, 483 U.S. 635, 646 (1987) (emphasizing “that  
 18 qualified immunity questions should be resolved at the earliest possible stage of a  
 19 litigation”).

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### III. CONCLUSION

For the foregoing reasons, Children’s motion for reconsideration (Dkt. # 65) is GRANTED and Plaintiffs’ *respondeat superior* claim against Children’s is DISMISSED without prejudice.

Dated this 21st day of April, 2022.

John P. Blot

JAMES L. ROBART  
United States District Judge